

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION (CHARLOTTESVILLE)**

IN RE:

PHYLLIS A. REHOR f/k/a

Phyllis M. Cotton and

ANTHONY A. REHOR,

Debtors.

CHAPTER 13 NO. 10-60682

PHYLLIS A. REHOR a/k/a

Phyllis M. Cotton and

ANTHONY A. REHOR,

Plaintiffs,

vs.

**ADVERSARY PROCEEDING
NO.**

**CITIFINANCIAL, INC. , doing business
under the fictitious name of
CitiFinancial, Inc. (MD)**

Defendant.

**COMPLAINT TO DETERMINE SECURED STATUS AND REMOVE LIEN FROM
REAL PROPERTY PURSUANT TO 11 U.S.C. § 506(a)**

Phyllis A. Rehor, formerly known as Phyllis M. Cotton, and Anthony A. Rehor, Debtors in the above-captioned Chapter 13 case (the “Debtors”) by their undersigned counsel, file this Complaint and state as follows:

1. The Debtors filed a petition for relief under Chapter 13 of Title 11 of the United States Bankruptcy Code on March 10, 2010.

2. Defendant CitiFinancial, Inc. (MD) (“CitiFinancial”) is a corporation engaged, among other businesses, in making consumer loans to residents of Virginia, and is the original creditor that made the loan to the Debtors secured by the Deed of Trust referenced in this Adversary Proceeding.

3. Upon information and belief, “CitiFinancial, Inc. (MD)” is a fictitious name used by CitiFinancial, Inc. for mortgage-related business in Virginia, and accordingly “CitiFinancial, Inc. (MD)” and “CitiFinancial, Inc.” refer to one and the same legal entity.

4. Citifinancial’s Registered Agent for purposes of service of process in Virginia is CT Corporation System, the Registered Office of which in Virginia is at 4710 Cox Road, Suite 301, Glen Allen, VA 23060-6802.

5. The Debtors own an improved parcel of residential real estate located at 26374 Indian Trace Trail, Unionville, VA 22567 (the “Property”) in Orange County, Virginia and more

particularly described as Lot 11, Section 3, Terry's Run as shown on a plat filed in Plat Cabinet H at pages 169 through 174 in the Clerk's Office of the Circuit Court of the said County.

6. The Property is the Debtors' principal residence.
7. The Debtors are obligated on a first mortgage loan (the "First Mortgage Loan") made by, and to the best of the Debtor's knowledge currently held by, Beneficial Mortgage Company of Virginia having an unpaid principal balance of approximately \$252,600 secured by the Property pursuant to a Deed of Trust dated April 19, 2006 and recorded in the said Clerk's Office on April 24, 2006 as Instrument No. 060004382.
8. The Debtors are obligated on a second mortgage loan (the "Second Mortgage Loan") made by, and to the best of the Debtor's knowledge currently held by, Citifinancial, the Defendant herein, having an unpaid principal balance of approximately \$90,000 and subject of record to a Deed of Trust on the Property dated October 23, 2007 and recorded in the said Clerk's Office on October 24, 2007 as Instrument No. 070010209 (the "Second Deed of Trust").
9. The County of Orange, Virginia determined for purposes of real property tax assessments in use for 2009 that the value of the Property was \$379,000.00, an amount which in the Debtors' opinion is excessive and substantially above current fair market value.
10. In February, 2010 at the Debtor's request Kelly Duckett-Corbin, a Realtor with the real estate brokerage firm Montague, Miller & Co. prepared an opinion of value the ("Broker's Price Opinion") which opined that the current fair market value of the Property was between \$225,000.00 and \$235,000.00. A copy of the Broker's Price Opinion is attached hereto as Exhibit A.
11. Accordingly, the Debtors believe and allege that the unpaid principal balance of the First Mortgage Loan is in excess of the current fair market value of the Property and that the Second Mortgage Loan is wholly unsecured.
12. Bankruptcy Code § 506(a) [11 U.S.C. § 506(a)] provides that:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest...is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property...and is an unsecured claim to the extent that the value of such creditor's interest...is less than the amount of such allowed claim.
13. Because the unpaid principal balance of the First Mortgage Loan is in excess of the current fair market value of the Property, Citifinancial is not a holder of a claim secured by the Debtor's residence and, as such, is entitled to only an unsecured claim in the Debtors' Chapter 13 proceeding.

WHEREFORE, the Debtors respectfully request that this Court enter an Order (i) granting judgment in Debtors' favor; (ii) finding that Citifinancial's Second Deed of Trust is wholly unsecured; (iii) directing that the purported lien represented by the Second Deed of Trust be stripped from the Property in accordance with the findings herein and applicable provisions of the Bankruptcy Code; and (iv) providing such further relief as the Court may find appropriate.

Dated: April 23, 2010.

Respectfully submitted,

PHYLLIS A. REHOR
ANTHONY A. REHOR
By Counsel

/s/ Richard D. Shepherd
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RESIDENTIAL PROPERTY BROKER PRICE OPINION

SUBJECT PROPERTY: 26371 Indian Trace Trail Unionville, VA 22567

Legal Description: 48 3 -3-11 Terry's Run Pc/H-171 Inst # 030002209

Year Built 2000 R/2BA One Level home (2043 sq ft/no basement) 10 acres

Competitive Closed Sales

3164 Indiantown Rd Locust Grove,VA 22508 7 miles from subject

Year Built 2008 3BR/2BA One Level Home

(1475sq ft /1475 sq ft unfinished basement) 1 car attached garage 2.03 acres

List Price \$185,000 Sold Price \$185,000 Seller Subsidy \$7,000

List Date 10/19/09 Sale Date 1/5/10 Owner- REO Property

28515 Laurel Canyon Blvd Rhoadesville,VA 22542 5 miles from subject

Year Built 2002 3BR/2BA One Level Home

(1776 sq ft/ no basement) 2 car detached garage 1 car attached 2.28 acres

List Price \$198,500 Sold Price \$195,000 Seller Subsidy \$2,000

List Date 7/23/09 Sale Date 9/16/09 Owner- Owner Occupied

220 Creek side Dr Locust Grove,VA 22508 7 miles from subject

Year Built 2004 3BR/2BA One Level Home

(2164 sq ft/no basement) 2 car detached garage .42 acres

List Price \$200,000 Sold Price \$200,025 Seller Subsidy None

List Date 5/18/09 Sale Date 11/13/09 Owner-Owner Occupied

Competitive Listings

26101 Indian Trace Trail Unionville,VA 22567 1/10 mile from subject

Year Built 2004 3BR/2BA One Level Home

(1670 sq ft/no basement) 2 car detached garage/rear deck 1.36 acres

List Price \$228,777 Current List Price \$170,000

List Date 5/1/09 Short Sale Subject to Third Party Approval

12212 Berrywood Ln Unionville,VA 22567 2 miles from subject

Year Built 2007 3BR/2BA One Level Home

(2040 sq ft/no basement) 2 car detached garage 5 acres

List Price \$175,900 Current Price \$175,900

List Date 10/26/09 Short Sale Subject to Third Party Approval

105 Aspen Ct Locust Grove,VA 22508 7 miles from subject

Year Built 2005 3BR/2BA One Level Home

(1800 sq ft/no basement) 2 car attached garage .33 acres

List Price \$229,000 Current Price \$199,900

List Date 7/25/09 Estate Sale

Adjustments

These were adjusted to reflect differences such as: acreage, square footage, amenities, & age

List Comp 1 \$ 213,650 List Comp 2 \$195,900 List Comp 3 \$230,900

Sold Comp 1 \$208,125 Sold Comp 2 \$210,500 Sold Comp 3 \$226,000

My opinion of value on the subject property is between \$225,000-\$235,000.

Montague, Miller & Co Realtors

332 James Madison Hwy

Culpeper, VA 22701

(540) 219-1358

Kelly@mrisc.com

Kelly Duckett Corbin, Realtor

Kelly Duckett-Corbin